

FARMER VS. LIVINGSTON.

AN APPEAL

BY

W. G. LIVINGSTON

TO THE

MEMBERS

OF THE

HOUSE OF PARLIAMENT

AT OTTAWA.

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FARMER vs. LIVINGSTON.

This case, which commenced about seven or eight years ago, has become more or less familiar to a great many, especially among those of the legal profession in Manitoba. But even those who have heard the case discussed have never thoroughly understood the matter. The object of this phamplet is to bring before the members of the Dominion House of Parliament at Ottawa, and more particularly the members of the Government, a full and complete account of the case as it occurred, and the manifest injustice done me by the local Lands Agents at Winnipeg and Emerson, who, with others connected with the affair, have fraudently deprived me of my hardly earned home. I feel confident that when the members of Parliament have carefully looked into my claim, and with unprejudiced minds have viewed it from every standpoint, they will, by arbitration or otherwise, endeavor to set this wrong right, and grant me the relief I have hitherto failed to obtain.

In reference to the legal aspect of the case, there prevails a great diversity of opinion, but all acknowledge that a wrong has been committed and the difference of opinion exists simply as to how the wrong should be righted. Whenever the case has been tried in this Province (Manitoba) the Judges have given their judgments in my favor, with the exception of Judge Miller, who held the same opinion as the Supreme Court, viz.: that I had no *locus standi* to attack the patent, but at the same time made the remark that "I am at a loss to see why the Dominion Government have not stepped in and settled the matter long before this," which shows that he was convinced a wrong had been done me. The Supreme Court ruled against me by a small majority on the same ground, but also said there was no doubt a great *moral* wrong had been done.

In my Bill of Complaint I accused Farmer of obtaining the Patent through fraud and misrepresentation, and also by conspiracy with the Local Lands Agent and others, and that the Dominion Government had issued the patent in error, *not knowing the facts*. The Supreme Court, by their judgment, seemed to be satisfied that the facts in reference to this case had been submitted to the Minister of the Interior, and that the Government in issuing the Patent had full knowledge of the case. The Hon. David Mills, Minister of the Interior at that time, has since acknowledged that he was misled by the Local Lands Agent at Winnipeg, and under his representation (which was all he had to direct him, as my papers had either been withheld at Winnipeg or suppressed at Ottawa) issued the patent to Mr. Farmer. Sometime before this I had

sent a sworn statement to Ottawa through the Hon. Joseph Royal, stating the facts, and because of this document, which was the only one Mr. Mills received as evidence for me, he requested the Winnipeg Lands Agent to make out a report of the whole case. The Agent on receiving this order authorized one of the clerks in the office who understood the case to draft a report. This draft was in the main correct, too correct in fact—for the Agent—who exhibited the most glaring partiality by inviting Mr. Farmer and his Solicitor into his office to have the draft report read. Why did he not extend the invitation to me? This report not being in accordance with Mr. Farmer's views, was suppressed, and another made, presumably under the direction of Mr. Farmer and his Solicitor, and signed by the Agent, was forwarded to Ottawa. And on the strength of this false and misleading report the Patent was issued to Mr. Farmer. This one incident is sufficient to show the odds against which I have had to fight in striving to obtain my rights.

In the above remarks only a few facts in reference to my *homestead* have been mentioned. With regard to my pre-emption a still more glaring fraud has been perpetrated. But as this portion of the property has not been before the courts the particulars in reference to it are not generally known. In the first place many labor under the delusion that I homesteaded the lot Mr. Farmer claimed as a pre-emption, and *pre-empted the one he claimed as a homestead*. This is only partially true. I homesteaded the lot he claimed as a pre-emption, and pre-empted an adjoining quarter section, for which there had never been a previous entry. Owing to my homestead being heavily timbered, and my pre-emption prairie, nearly all the land I cultivated for farming purposes was done on the latter, consisting of between eighty and one hundred acres ready for crop. When Mr. Farmer received the Patent for the quarter section in litigation, he made application to purchase my pre-emption, after I had been cultivating and improving it for nearly four years. And though prior to this he had not even pretended to have a shadow of a claim on it, his application was granted, and he was allowed to purchase it, both he and the Agent who permitted the sale, knowing perfectly well that I had many improvements on the lot. This last bit of rascality was evidently done with the hope of crippling me financially, and placing me in such a position that I could no longer continue to fight for my home when it would become Mr. Farmer's without further trouble or litigation. Another strange thing in regard to this matter is the fact that Mr. Farmer received the patent for the lot he claimed as his pre-emption (my homestead) two years after the lot he claimed as his homestead had been cancelled by one Josiah Ross. And he now stands in the strange position of a man with a pre-emption paid up and patented and without a homestead, this being contrary to the Homestead Act of Manitoba, and which I firmly believe no other man in the Province can accomplish. After reading the above facts can any man tell me what encouragement a *bona fide* settler receives in this country. He toils year in and year out to improve his farm, and after enduring all the hardships of pioneer existence, has his property, so dearly pur-

chased, coolly turned over to one who has fulfilled none of the conditions of settlement, but who on account of some previous intimacy with the Local Land Officials, he at one time being a clerk in the Land Office, has favor shown him beyond that of any British settler in the Northwest. Knowing that I was right, and having the best legal opinion of Canada to confirm me in this belief, I resolved to fight it to the bitter end, and so for eight long years I have managed to struggle on with this lawsuit, confident that at last justice would be done me. But no! for a trifling technical point (in which many still believe me to be right) the labor of years is torn from me, and with money all spent I am dispossessed and left, no longer a young man, to commence with my family the world afresh.

That a wrong has been done me is evident, and as the late Chief Justice Wood said, when giving judgment in this case, "where there is a wrong there must be a remedy." And this remedy lies alone in the hands of the Dominion Government. What I would ask is this:—Let the Government file a bill to set these fraudulent Patents aside, or else appoint an arbitration to decide what shall be done. Let the Government appoint one man, the Courts of Manitoba a second and I a third, and I bind myself to stand or fall by their decision. I appeal to the members of the House of Parliament at Ottawa to see that I get that right of every British subject—justice.

I could give several instances of wrong done to settlers by the Land Office, but as they have no direct bearing upon this particular case, I refrain from doing so at the present time. But whether published or not, every case of injustice like this is so much more against immigration. But I still hope that when the members have carefully read this, and the statement given below, they will do their utmost towards reinstating me in the home of which I have been so long defrauded. I publish this statement with great reluctance, knowing that all agitation must prove prejudicial to the cause of immigration. I have therefore endeavored to keep all mention of this case from the press. But as every other method has failed, and as I can see by the tone of letters received from Ottawa that the Ministers have no conception of the injustice done, I have no other way of laying my case before them.

Further on you will find a copy of the Draft Report already mentioned, which was suppressed, and also a copy of Mr. Codd's report, on the strength of which the Patent was issued to Mr. Farmer, and also copies of correspondence between the Emerson office and myself.

In the fore part of Mr. Codd's report he says that I claimed "a right to a homestead entry for the S.-W. $\frac{1}{4}$ of Sec. 30 (Farmer's pre-emption) and a pre-emption for Farmer's homestead." Mr. Codd must have known that part of this statement was untrue, as I never made a pre-emption entry for Farmer's homestead; my application for pre-emption being the N.-W. $\frac{1}{4}$ of Sec. 19. In the same paragraph Mr. Codd admits that I had filed certain affidavits in May, 1875, but is careful not to give the exact date. My affidavits were filed on the 7th of May, the same day that my application was made. In the next paragraph he says, "About the same time Farmer applied to purchase his pre-emp

tion." Instead of being made "about the same time," Mr. Farmer's application was not made until over a month afterward, being on the 11th of June, 1875.

The only excuse the Land Agent at Emerson could offer for not accepting my application was that I had already abandoned two claims, and therefor could not have a third entry. Mr. Newcomb must have known better because he had written the words "*in lieu*" across my second homestead receipt, and because he had not received a second entrance fee, as my first claim had been taken away from me by the Government, and the second one was given to me *in lieu* of it, clearly showing that I had only the one entry.

Mr. Codd admits in his report that he sanctioned the sale to Mr. Farmer of his pre-emption. When discussing this point with members of Parliament and others, they say that Farmer could not purchase his pre-emption without first living on his homestead the necessary three years, as it was contrary to the Homestead Act. I am not prepared to say how he could it, but one thing I know—he *did* do it.

A little further on in his report Mr. Codd says that he remembers the circumstances in connection with first entry perfectly, and that I had improperly obtained from Mr. Burrows an entry for one of those river lots in rear of Portage la Prairie (should be High Bluff.) Mr. Codd could not have known the circumstances "perfectly," as he was not in the Land Office at the time, and I did not receive my homestead receipt from Mr. Burrows, but from Mr. Mills, Mr. Whitcher being the Land Agent in charge at the time, and who granted my application. Mr. Codd in the same paragraph accuses me of obtaining this lot for speculation. Here again he tries to mislead, insinuating that I took this lot for the purpose of blackmailing the river settler, and also makes a point by mentioning the fact of my residing in St. James Parish at the time I made my application. My application was made in the depth of winter, when it was utterly impossible for me to go onto my claim, but as soon as spring opened I did so, thereby proving my good faith. When I moved onto the claim I knew nothing whatever about its broken frontage, and did not until I received Mr. Burrows' letter informing me of the fact.

Mr. Codd also charges me with offering the lot for sale to Mr. Fawcett. I give this a positive denial. I only met Mr. Fawcett once in Portage la Prairie, and during that meeting there was no mention of a sale between us. Mr. Codd also says that he charged me with offering it for sale and that I did not attempt to deny it. This is another falsehood, for he never spoke to me about anything of the kind. If this was the reason of the cancellation of this lot, as Mr. Codd states in his report, why did Mr. Burrows write to me to come back to Winnipeg and say that another lot would be given me *in lieu* of it? And why was this second lot given to me *in lieu* of my first entry (as the books of the Land Department will show) if Mr. Codd's statement is correct? He is very strict with me on this particular point, but why was he not so with Mr. Farmer? I can prove by a dozen witnesses, if neces-

sary, that Mr. Farmer had more than once offered the claim in dispute for sale, giving as his reason that he never intended settling upon it.

Again Mr. Codd says, "I have been informed by Mr. Farmer that Livingston is still living on the lot, having pulled down and built a house for himself from the timber in the house originally built by Farmer." In a previous part of his report Mr. Codd also makes mention of some ploughing done by Farmer. These so-called "improvements" were made some two years before my application, and as to their genuineness see evidence of Samuel Parsons, taken before the late Chief Justice Wood, where, when questioned about the improvements, witness swore that "It would take a search warrant to find them."

I would ask the members to carefully peruse the two following reports and also the letters, and then with unprejudiced minds ask themselves if Mr. Codd's is a strictly impartial report.

What I would respectfully ask of the Government is to file a Bill to set these fraudulent patents aside; to have me reinstated in my home and recompensated for my heavy losses, which have been caused through the wilful blundering of their Dominion Lands Agents. Or any other way which they may deem advisable to obtain the same end. Should Mr. Farmer put in a defence (which is altogether improbable). I am in a position to give satisfactory evidence to any Court as to the justice of my claims.

The property in dispute, which I have made extremely valuable during my long residence upon it, nearly nine years, had upon it at the time I was dispossessed improvements to the amount of \$20,000 (twenty thousand dollars.) During the winter of 1881-2 I was offered the handsome sum of \$180,000 (one hundred and eighty thousand dollars) for the property, it being the town plot of Carman City, but was unable to close the sale because of it being in litigation.

Much fault has been found with the existing state of the land laws of this Province. I cannot say but what I think they might be amended, but in my opinion (and it should have some weight on account of my twelve years residence in this province) the unscrupulous and incompetent Land Agents are driving more people out of the country than any deficiency in the Land Regulations could possibly do. And in this state of affairs actual settlers cannot be expected to encourage immigration.

Statement of facts in reference to an application for a Homestead and Pre-emption, by William Guy Livingston.

In February, 1874, I made application at the Dominion Lands Office, Winnipeg, for part of section 12, township 12, range 6 west, near High Bluff, which was granted to me by the Agent at Winnipeg, Mr. Whitcher. After I had paid my homestead fee of \$10 (ten dollars) my homestead receipt was signed by one Mr. Mills. In June following I proceeded with my family to my claim, taking with me timber to build a house and necessary agricultural implements. About three days after my arrival at the lot I received a letter from the Land Office

at Winnipeg, signed by A. W. Burrows, saying I could not have the lot as it was a broken frontage, and the river settlers had a right to purchase it, but told me if I would come back to Winnipeg the Government would give me another lot *in lieu* of it. On this information I sold my lumber at a great sacrifice and removed my family and goods back to Winnipeg. On my arrival there I selected another lot without personal inspection, situate in the Boyne Settlement, the North half of Section 17, township 6, Range 4, West. I at once proceeded to take possession, taking my family and a necessary outfit with me. Meanwhile my application was sent to Emerson, from which office I received my homestead receipt, upon which was written the words "*in lieu of your former entry*" and signed by George Newcomb. Upon my arrival at the lot I found it would not suit me and therefore did not settle upon it, but remained in the settlement during the summer. In the fall I commenced to build a mill on the S.-E. $\frac{1}{4}$ of Section 30, Township 6, Range 4, West, on the Boyne River. After building my mill dam I found that the water would back up on the S.-W. $\frac{1}{4}$ of the same section, the mill-dam being only 22 rods (as per measurement of O. B. David, D.L.S.) from the S.-W. $\frac{1}{4}$ of section 30. Upon enquiry I learned that the S.-W. $\frac{1}{4}$ of section 30 was held as a pre-emption by one W. A. Farmer, of Headingly, who also held a homestead right of the N.-W. $\frac{1}{4}$ of the same section. Mr. John V. Graham, a neighbor of mine, told me that Farmer did not intend to settle upon his homestead, as he (Farmer) had told him so, saying that he had a good farm where he was at Headingly, and that his homestead was too far away (see Graham's evidence). I went to Winnipeg, saw Mr. Codd, D. L. A. there. I asked him if I could homestead the S.-W. $\frac{1}{4}$ of section 30, and pre-empt the N.-W. $\frac{1}{4}$ of section 19, township 6, range 4, west. After examining his books he told me that the S.-W. $\frac{1}{4}$ of section 30 was held as a pre-emption by one W. A. Farmer, and that the N.-W. $\frac{1}{4}$ of section 19 was a Government lot and open for settlement. I informed Mr. Codd that Farmer was not living on his homestead, and had never lived upon it, nor had he made any improvements upon it. Mr. Codd then told me to get two affidavits to state that there were no *bona fide* improvements and that he never had lived on it, and he would allow me to homestead the S.-W. $\frac{1}{4}$ of section 30, and pre-empt the N.-W. $\frac{1}{4}$ of section 19. I procured the necessary affidavits and took them in to Mr. Codd. Upon examination of the affidavits he said, "All right; go into Mr. Wood's office and he will make out your application." Mr. Codd also instructed me to have Mr. Wood enclose affidavits with application, to be forwarded to Emerson. I went into Mr. Wood's office, just across the hall, and repeated what Mr. Codd had said. Mr. Wood then made out my application for the S.-W. $\frac{1}{4}$ of section 30 as a homestead, and the N.-W. $\frac{1}{4}$ of section 19 as a pre-emption, both in the township and range above mentioned. I paid him \$10 (ten dollars) the necessary entrance fee, and abandoned lot 17, which I had received *in lieu* of my first entry. I then asked Mr. Wood if I would

have to wait for my receipt. He replied no ; that I might go home and go to work, for he would have to send my application to Emerson, and he would instruct Mr Newcomb, the Agent there, to forward my receipt by mail. I went home in all good faith, believing that my homestead receipt would come in due time; as it had done on a previous occasion, and took possession on the 12th day of May, 1875. About five days after I had made my application I commenced "breaking" up land and building my house, thinking all was right.

About a month afterwards I received a letter from Mr. Newcomb at Emerson, saying that he had received my application, but could not give me an entry, owing to my having abandoned two claims already. On receipt of this letter I wrote to Mr. Newcomb, and fully explained to him how I came to have the two entries, and requested him to forward my homestead receipt. On the 9th of June I received a letter from Mr. Newcomb, saying my application could not be recognized, enclosing my entrance fee of \$10, but did not return my application or affidavits. Upon the receipt of this last letter from Mr. Newcomb, I went to see Mr. Codd to explain how I came by the two entries. He informed me that Farmer had just purchased the S.-W. $\frac{1}{4}$ of section 30 as his pre-emption, by placing a Military Bounty Warrant upon it. I asked Mr. Codd how Mr. Farmer could pay up for his pre-emption, never having lived upon his homestead, which was altogether contrary to the Homestead Act. He answered that he was authority enough for that. I told Mr. Codd that I was in possession of the lot, had my house erected and was living on the lot, and asked him to withdraw Farmer's warrant and give me my entry. He asked me to let the lot go and take another one. I told him that if I could take another lot there was no reason why I could not hold this one, and that he (Mr. Codd) was showing partiality. He replied that I might go without a lot. I said I would write to Ottawa about the matter.

I then went and procured a letter from Mr. Burrows to Mr. Codd, informing him how I came by the two entries. I took the letter to Mr. Codd, and also showed him the letter I received from Mr. Burrows, in reference to by first entry, asking me to come back to Winnipeg and I would receive one *in lieu* of it, as there had been a mistake ; and also my homestead receipts, showing the whole transaction. Mr. Codd then said he would refer the whole matter to Ottawa, enclosing Newcomb's letters, Burrows' letters and my former homestead receipts. I asked Mr. Codd what I had better do. He said I had better stay on the lot, and at the same time expressed the opinion that I would come out all right. I had a suspicion at the time that he was misleading me, which I afterwards found to be correct, by a subsequent enquiry at the Interior Department at Ottawa, learning that no such papers or letters had ever been received there. I then waited upon Mr. Codd and asked why those papers had not been sent to Ottawa, and asked him for the letters, &c., which he had promised to send. He said he had mislaid and was unable to give them to me.

I then wrote to Ottawa, and in July following received a letter from Col. Dennis, saying that the matter would be looked into. I heard nothing more for about a year, when I received a letter from Mr. Codd stating that the title for the S.-W. $\frac{1}{4}$ of section 30 was now vested in Mr. Farmer. I then went before the Hon. Joseph Royal, at that time a Minister of the Local Government, and made a solemn declaration corresponding with the above facts, which he (Mr. Royal) forwarded to Ottawa to the Minister of the Interior. I afterwards saw the Hon. David Mills, then Minister of the Interior, when he was in Winnipeg. I spoke to him about my claim. He told me he would ask the Agent to make a report of it. I told Mr. Mills that Mr. Codd had already deceived me, and that I was afraid he would not make an impartial report, and asked him to appoint a commission to investigate the matter as I was being most seriously wronged. He said it would cost too much to have a commission appointed. I told him I would put up the money to pay expenses if I was wrong. This he would not consent to do.

Mr. Codd made out a report which was false and misleading, and upon which a patent was issued in February, 1879, to Mr. Farmer, for my homestead, the S.-W. $\frac{1}{4}$ of section 30. Mr. Farmer then made application to purchase my pre-emption, the N.-W. $\frac{1}{4}$ of section 19, although they both knew that I had been working and cultivating it for nearly four years, and had very large improvements on it.

This sale was carried out on the 12th day of February, 1879. I had made application to pay up for my pre-emption during the summer of 1878, having resided on my homestead the necessary three years. This was refused. I then made application to purchase it as a Government lot, but this also was refused. When I heard that Farmer had purchased my pre-emption, the N.-W. $\frac{1}{4}$ of section 19, I went to Winnipeg and had a protest served on the Land Agent there, protesting against the issuing of the patent to Mr. Farmer. This, like other papers, was never forwarded to Ottawa. Mr. Farmer then served me with a writ of ejectment, to dispossess me of the S.-W. $\frac{1}{4}$ of Sec. 30. I appeared to the writ and put in a defence. The case was tried before the late Chief Justice Wood, who, after hearing the evidence, gave judgment setting the patent aside. Farmer then appealed to the Supreme Court at Ottawa, which reversed the decision of Judge Wood, on technical grounds.

I then filed a bill in Equity, accusing Farmer and the Land Agents of conspiracy and fraud, and of obtaining the patent through false representation, to which Farmer, the defendant, demurred. This came on for a hearing before Judge Miller, who allowed the demur, on the ground that I had no *locus standi*, never having received my homestead receipt. I appealed to the full court of Manitoba, which reversed Judge Miller's decision, overruling the demur and allowing the Bill. Farmer again appealed to the Supreme Court at Ottawa, where the judgment of the full Court of Manitoba was reversed.

N.-W. $\frac{1}{4}$.

SECTION 30.

Farmer's Homestead,
cancelled by
Josiah Ross.

S.-W. $\frac{1}{4}$.

Farmer's Pre-emption.
DISPUTED
PROPERTY.
Livingston's Homestead.

N.-W. $\frac{1}{4}$.

SECTION 19.

Livingston's
DISPUTED
PROPERTY.
Pre-emption.

TOWN PLOT OF CARMAN.

Comprising S.-W. $\frac{1}{4}$ of Section 30 and the N.-W. $\frac{1}{4}$ of Section 19.

[COPY OF DRAFT REPORT.]

Re the S.-W. $\frac{1}{4}$ Section 30, Township 6, Range 4, West, in dispute between W. A. Farmer and W. G. Livingston.

Livingston entered on the 30th November, 1873, the S.-W. $\frac{1}{4}$ of section 12, township 12, range 6, west, as a homestead. This entry appears to have been cancelled, and on the 26th of June, 1874, he made a second entry of the N.-W. $\frac{1}{4}$ of section 17, township 6, range 4, west, as a homestead, and the N.-E. of same as a pre-emption. On May 5th, 1875, he abandoned this second entry. He afterwards settled upon the S.-W. $\frac{1}{4}$ of section 30, township 6, range 4, west—the lot in dispute—and applied to be entered for it, but was refused on the ground that he had already obtained a second entry (see sub-section 14, clause 33, Dominion Lands Act) and on the ground that the lot was already held by Farmer as a pre-emption in connection with his homestead, the N.-W. $\frac{1}{4}$ of same section. Livingston appears to have continued to reside upon Farmer's pre-emption, which he (Farmer) purchased by M. B. Warrant on the 7th of June, 1885. On Dec. 22nd of that year (1875) Livingston wrote to Ottawa pressing his claim to a homestead entry for the pre-emption held by Farmer, the S.-W. $\frac{1}{4}$ of section 30, township 6, range 4 west, arguing that he had a good house and stable upon it, and about seven acres ploughed ready for crop in the spring. He built a bridge over the river at a cost to him of \$150, and intended to build a mill and hotel on the lot in the spring of 1876, he alleged.

It appears by a letter addressed to Mr. Livingston by Mr. Burrows June 17, 1874, that Livingston *did not* voluntarily relinquish his claim under sub-section 14, clause 33, D. L. A., but was notified by Burrows that the S.-W. $\frac{1}{4}$ of section 12, in township 12, range 5 west [C. W], "having been given to him as a homestead in ignorance of a sale of it having been made at the time of his entry, the homestead entry was of necessity null and void," and it was accordingly cancelled by the office. On the 26th of the same month he took up the N.-W. quarter of section 17, township 6, range 4 west [stated in his petition to be township 7 west, should be township 6] as a homestead, and the N.-E. of same section as a pre-emption, finding this lot unsuitable he voluntarily abandoned it on May 7, 1875, and soon after made application for the S.-W. quarter of section 30, township 6, range 4 west the lot now in dispute, and then held as a pre-emption by Farmer, and purchased by him as already stated. The lot was unoccupied and unimproved, and having been entered by Farmer over one year was liable to cancellation upon application. This application was made in the ordinary way, Livingston alleges, but his fee was returned to him by Mr. Newcomb, local agent at Emerson, on the grounds stated, and on the 7th June following the lot was sold to Farmer, although it appears he had never lived, and had made no improvements upon his homestead, but was then, and is still living upon his river farm at Headingly.

Livingston having moved upon the lot, knowing it for the time

being in the possession of Farmer, but expecting it would be cancelled against him in the ordinary way, went on making improvements upon it. When his fee was returned to him with the statement that he could not obtain an entry for it under sub-section 14, clause 33, D. L. A., he still continued to live upon and improve the lot, hoping, no doubt, to satisfy the office that he was entitled to the entry, and that the lot *was* of the class that might be cancelled legally and without injustice to Farmer. It appears, however, that he failed to do this, for upon the 9th June, 1876, the D. L. A. informed him by direction of the Hon. the Minister of the Interior that having given careful attention to the evidence submitted by him (Livingston), he (the Minister) was "of the opinion that as Mr. Farmer's entry had never been cancelled, you (Livingston) were entirely unjustified in claiming it, and that any improvements you may have made were done at your own risk." He was further informed in the same letter that "the patent for the quarter section in question will therefore issue to Mr. Farmer forthwith." On the receipt of this letter Livingston appears to have placed his case in the hands of Messrs. Royal and Dubuc, solicitors, of Winnipeg, who, on the 8th June, 1876, the date of the letter from this office to Livingston, prepared and forwarded to the Minister attached to the U. O. letter 5,118 of 20th June, 1879, and received at this office on the 29th. The facts in this memorial appear to be substantially correct, and of such a nature as to justify, in my opinion, the Department in declining to issue the patent to Farmer for the lot in question, purchased by M. B. warrant on the 7th June, 1875. I would therefore recommend that, under all the circumstances, the pre-emption entry of Farmer for the S.-W. quarter of section 30 township 6, range 4 west be cancelled, the sale thereof to him revoked, and that Livingston be permitted to purchase the same at the rate of one dollar per acre, or such increased rate per acre as the Minister may in his discretion place upon it.

19/77/A./B.

DOMINION LANDS OFFICE,

SIR,

Winnipeg, 25th April, 1876.

I have the honor to report as follows regarding a dispute which has arisen between one W. G. Livingston and W. A. Farmer.

In October, 1873, Mr. W. A. Farmer filed his own affidavit and that of one John Ferguson, in support of his claim under the provision of the Manitoba Act, to the S.-W. quarter of section 30 and the N.-W. quarter of section 19, in township 6, range 4, west, which he claimed to have taken possession of in 1869, and to have upon it at the date of making his application a house partly built, together with some ploughing.

Mr. Farmer afterwards entered an adjacent quarter section as a homestead, and took the S.-W. quarter of section 30, above mentioned, as a pre-emption claim in connection with his homestead, confining his claim under the Manitoba Act to the N.-W. quarter of section 19.

In May, 1875, Mr. W. G. Livingston filed certain affidavits to

prove that Farmer had abandoned his homestead or had forfeited it by not making sufficient improvement upon it, and claimed a right to a homestead entry for the S.-W. quarter of section 30 (Farmer's pre-emption) and a pre-emption entry for Farmer's homestead.

About the same time Farmer applied to purchase his pre-emption claim, tendering a Military Bounty Warrant in payment.

Both these applications were made to the local agent at Emerson, within whose district the land in question was situated. He referred the case to me, and on examining the books I found that Livingston had already been entered for two homesteads, and that his application, if granted, would make the third homestead he had obtained. I therefore instructed the local agent that Livingston had forfeited all right to a homestead entry, and that his application was null and void, and that he would act regarding Mr. Farmer's application precisely as though no conflicting application had been received. The sale was accordingly carried out to Mr. Farmer.

As is proper I mention here that Mr. Livingston had been to see me prior to this time and told me that he proposed to show that Farmer had abandoned his claim, and informed me also that he had already taken possession of the land by building a house, &c. I of course explained to him that such action on his part was entirely indefensible, while Farmer's entry remained uncanceled; that he was trespassing and would have to abide the consequences.

Shortly after the sale to Farmer, Livingston again applied to me and alleged that the first homestead entry he had obtained was taken away from him by the office, with the understanding that he should have another one in lieu of it, without prejudice to his right to obtain a third. He afterwards brought me the enclosed letter from Mr. Burrows, lately a clerk in this office.

Regarding this letter I have to say that I remember the circumstance of this first entry to Livingston perfectly.

Certain quarter sections in rear of the river lots in Portage la Prairie were set apart for division among the proprietors of the river front lots. I found, however, that W. G. Livingston, who was at that time living in St. James' Parish, had improperly obtained from Mr. Burrows an entry on one of these. On enquiring into the facts, I was satisfied it was a gross piece of speculation, and that in fact he had attained it with the intention of making the river front proprietors pay him to relinquish his claim. The enclosed letter from Mr. Fawcett, one of the front proprietors, shows this; and on charging Livingston with having offered it for sale, he did not attempt to deny it. I therefore cancelled the entry on the ground that the law already intended that such a transaction should entail a forfeiture of the entry. Mr. Burrows must have strangely forgotten the facts, as at the present time there is a memorandum in the books attached to the record of this quarter section in his own handwriting, to the effect that Livingston's entry was cancelled by me in consequence of its having been forfeited by his action in having offered it for sale.

I may add that I have been informed by Mr. Farmer that Livingstone is still living on the lot, having pulled down and built a house for himself from the timber in the house originally built by Farmer, referred to in his application for patent, and that besides he has cut and destroyed much timber; and it is for this reason that Mr. Farmer is anxious to obtain the patent, for he is advised that he cannot prevent the trespassing till the title is vested in him by the issue of letters patent.

The statement made by Livingstone that the possession of this lot is necessary to the running of a mill, which he alleges that he is going to build, is, according to the report of W. G. F. Newcombe, Timber Inspector, false. The mill in question is to be nearly a mile off, on the banks of the river, which are very abrupt, are sixteen (16) feet high, and the dam which he is building will not, when completed, nearly raise the water to the top of the bank, far less overflow property so far off as the land in question.

As it is desirable to place Mr. Farmer in a position to protect the timber, etc., on his lot, I included the sale of this lot to him amongst those recommended for patent for the month of March. Should, however, you be of opinion that my action in this matter was improper, I have to request that you will cause the same to be struck out of the return in question.

I have the honor to be, Sir,

Your obedient servant,

LIEUT.-COL. J. S. DENNIS,
Surveyor-General, Ottawa.

(Sgd.) DONALD CODD,
Agent of Dominion Lands.

OFFICE OF DOMINION LANDS,

SIR,

Emerson, June 2nd, 1875.

I have the honor to acknowledge the receipt of your application to homestead S.-W. 30, 6, 4, w., and affidavits in support of same, also your \$10, fee and abandonment of previous claim, and to inform you that it is impossible for me to give you the entry applied for without special instruction, as my books shew that you have already made two homestead entries, and that is all the law allows anyone to make.

Your \$10 will be here awaiting instructions from you.

I have the honor to be, Sir,

W. G. LIVINGSTON, Esq.
Headidgly.

Your obedient servant,
(Sgd.) GEO. NEWCOMB.

G. NEWCOMB, Esq.,
Emerson,

WINNIPEG, JUNE 5TH, 1875.

DEAR SIR,

I received yours of June 2nd, No. 473, and in reply would say that I have not made more than one entry. The lot which was granted for me at High Bluff was taken away from me by the Department and the other given in lieu of it, so I have only abandoned one lot. I spoke to Mr. Codd about the matter and he

told me that I would be allowed to make the entry, so I hope this will be satisfactory, and that you will forward me receipt at once.

And oblige, yours,

(Sgd.) W. G. LIVINGSTON.

OFFICE OF DOMINION LANDS,

Emerson, June 7th, 1875.

SIR,

I have the honor to acknowledge the receipt of your letter of 5th June, and to inform you that your application to enter the S.-W. quarter of 30, t'p 6, R. 4, west, cannot be recognized.

I therefore return you \$10 enclosed.

- I have the honor to be, Sir,

W. G. LIVINGSTON, ESQ.,
Headingly.

Your obedient servant,

(Sgd) GEO. NEWCOMB.



